

## § 2.404

would clearly be in the interests of EPA and responds as soon as practicable.

### § 2.404 Procedures when an employee is subpoenaed.

(a) Copies of subpoenas must immediately be sent to the General Counsel or his designee with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director, determines whether compliance with the subpoena would clearly be in the interests of EPA and responds as soon as practicable.

(b) If the General Counsel or his designee denies approval to comply with the subpoena, or if he has not acted by the return date, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn), produce a copy of these regulations and respectfully refuse to provide any testimony or produce any documents. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) Where employees in the Office of Inspector General are subpoenaed, the Inspector General or his designee makes the determination under paragraphs (a) and (b) of this section in consultation with the General Counsel.

(d) The General Counsel will request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Agency and the employee.

### § 2.405 Subpoenas *duces tecum*.

Subpoenas *duces tecum* for documents or other materials are treated the same as subpoenas for testimony. Unless the General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director (or, as to employees in the Office of Inspector General, the Inspector General) determines that compliance with the subpoena is clearly in the interests of EPA, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee

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that the subpoena was not validly issued or served or that the subpoena has been withdrawn) and respectfully refuse to produce the subpoenaed materials. However, where a subpoena *duces tecum* is essentially a written request for documents, the requested documents will be provided or denied in accordance with subparts A and B of this part where approval to respond to the subpoena has not been granted.

### § 2.406 Requests for authenticated copies of EPA documents.

Requests for authenticated copies of EPA documents for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure will be granted for documents which would otherwise be released pursuant to subpart A. For purposes of Rule 44 the *person having legal custody of the record* is the cognizant Assistant Administrator, Regional Administrator, Staff Office Director or Office Director or his designee. The advice of the Office of General Counsel should be obtained concerning the proper form of authentication.

## PART 3—CROSS-MEDIA ELECTRONIC REPORTING

### Subpart A—General Provisions

#### Sec.

- 3.1 Who does this part apply to?
- 3.2 How does this part provide for electronic reporting?
- 3.3 What definitions are applicable to this part?
- 3.4 How does this part affect enforcement and compliance provisions of Title 40?

### Subpart B—Electronic Reporting to EPA

- 3.10 What are the requirements for electronic reporting to EPA?
- 3.20 How will EPA provide notice of changes to the Central Data Exchange?

### Subpart C [Reserved]

### Subpart D—Electronic Reporting under EPA-Authorized State, Tribe, and Local Programs

- 3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?
- 3.2000 What are the requirements authorized state, tribe, and local programs' reporting systems must meet?